

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
  
FOR THE CITY OF ROSEVILLE

In the Matter of the Proposed Penalty by the City of Roseville Against the Green Mill Restaurant and Bar for a Liquor Code Violation	<b>FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS</b>
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The above matter was heard by Administrative Law Judge Richard C. Luis in the Aspen Room at the Roseville City Hall in Roseville, Minnesota, on December 13, 2006. The hearing record closed on December 14, 2006, with the submission of late-filed exhibits by counsel for the City of Roseville (City).

The City was represented by Isaac Kaufman, Esq., Ratwik, Roszak & Maloney, P.A., 730 Second Avenue South, Suite 300, Minneapolis, MN 55402. John D. Gillen, General Manager, Green Mill Restaurant and Bar, 145 Rosedale Center, Roseville, MN 55113, represented No Match, Inc., d/b/a Green Mill (Green Mill, Licensee).

**NOTICE**

This report is a recommendation, not a final decision. The decision in this matter will be made by the Roseville City Council at a scheduled meeting. Parties should contact the Roseville City Manager, 2660 Civic Center Drive, Roseville, MN 55113 for information regarding the filing of exceptions, presentation of argument, or any scheduled appearance before the Roseville City Council.

**STATEMENT OF ISSUE**

1. Whether the decision of the Roseville City Council on July 10, 2006 to impose a \$500 fine and one-day liquor license suspension for a liquor code violation under Chapter 302 of the Roseville City Code and Minn. Stat. § 340A.503 was appropriate?

Based on the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Prior to the hearing on December 13, 2006, the City of Roseville and Green Mill entered into a Stipulation, which provides:

- That the Green Mill's appeal was filed to challenge the penalty imposed by the Roseville City Council on July 10, 2006 for serving alcohol to an underage person; and
- That the December 13, 2006 hearing would be limited to oral arguments; and
- That the Green Mill is a restaurant located at 145 Rosedale Center, Roseville, MN. Green Mill maintains an intoxicating liquor license issued by the City of Roseville pursuant to Minnesota Statutes, Section 340A.404, subd. 1 and Section 302.02 of the Roseville City Code; and
- On August 12, 2005, the Roseville Police Department conducted an alcohol compliance check on Green Mill. During this compliance check, the police observed a Green Mill employee, Roxanne Cossny Loth, serving alcohol to a person under the age of 21, in violation of Minnesota Statutes, Section 340A.503, subd. 2 and Section 302.01 of the Roseville City Code; and
- On August 24, 2005, the Roseville Police Department cited Green Mill for this liquor code violation and imposed a penalty of a one-day suspension of the sale of alcoholic beverages;<sup>1</sup> and
- Green Mill appealed the August 24, 2005 citation. A hearing was held before City Manager Neal Beets on September 27, 2005; and
- On October 28, 2005, Mr. Beets issued a decision finding that Ms. Loth had indeed provided alcohol to an underage person. As a penalty, instead of the one-day suspension of the sale of alcoholic beverages, Mr. Beets instructed Green Mill to pay a fine of \$500 and also to contribute \$500 to the charity of its choice;<sup>2</sup> and
- Pursuant to Section 302.15 of the Roseville City Code, the presumptive penalty to be imposed by the City Council for a first violation by an intoxicating liquor license holder who serves alcohol to an underage person is a \$500 fine and a one-day suspension of the license;<sup>3</sup> and

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<sup>1</sup> Joint Ex. A.

<sup>2</sup> Joint Ex. B.

<sup>3</sup> Joint Ex. C.

- On May 8, 2006, the Roseville City Council decided that the City Council, rather than the City Manager, should have decided the penalty for Green Mill's liquor code violation. The City Council decided to conduct a hearing to determine whether there was a basis to deviate from the presumptive penalty set forth in the City Code. By letter dated June 19, 2006, Green Mill was notified that a hearing would be held during the City Council's regular meeting on July 10, 2006. Green Mill was invited to present any information at the hearing that it wanted the City Council to consider;<sup>4</sup> and
- The hearing was held before the Roseville City Council on July 10, 2006. No one appeared at the hearing on behalf of Green Mill;<sup>5</sup> and
- After hearing all of the evidence presented, the Roseville City Council voted to impose the presumptive penalty of a \$500 fine and a one-day license suspension. Green Mill was notified of this decision by letter dated July 31, 2006;<sup>6</sup> and
- Green Mill requested a hearing to appeal the penalty imposed by the Roseville City Council at its July 10, 2006 meeting. The December 13, 2006 hearing was scheduled accordingly.

See Joint Exhibit 1.

2. John Gillen, the General Manager of the Green Mill Restaurant and Bar at Rosedale, made the decision not to appear at the July 10, 2006 Council meeting. Mr. Gillen had the discretion whether to appear or not on behalf of Green Mill. Green Mill made no appearance because Mr. Gillen believed that the hearing he had before the City Manager had already constituted the public hearing provided for under Section 302.15C of the Roseville City Code and Minn. Stat. § 340A.415. Mr. Gillen believed that the City Manager, in imposing his decision of October 28, 2005 and having conducted the hearing, had acted on behalf of the Council. Since the June 19, 2006 letter from counsel announcing the hearing before the City Council on July 10, 2006 makes no reference to a public hearing, Mr. Gillen did not appear and believed that any review conducted by the Council would be of the tape or transcript made from the hearing he already had before the City Manager.<sup>7</sup>

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<sup>4</sup> Joint Ex. D.

<sup>5</sup> Joint Ex. E.

<sup>6</sup> Joint Ex. F.

<sup>7</sup> Testimony of John Gillen. Although the parties had agreed to limit the December 13, 2006 hearing to oral arguments, Mr. Gillen testified to various facts that day, so the Administrative Law Judge exercised his prerogative to swear/affirm Mr. Gillen as a witness. Counsel for the City was allowed to cross-examine Mr. Gillen accordingly.

3. On October 28, 2005, the Roseville City Manager sent letters to two other licensed liquor establishments in the City of Roseville, who had gone through a hearing procedure before him similar to the procedure followed by Green Mill, and imposed penalties on them as a result of the hearings he had conducted. These two establishments received similar letters from the Roseville City Attorney, both dated June 19, 2006, requesting them to appear at a hearing before the City Council on July 10, 2006. These letters were essentially identical to the letter/notice sent to Green Mill. Each of the other two establishments appeared at the City Council hearing on July 10, 2006 and presented arguments.<sup>8</sup>

4. Imposition of a one-day suspension of the sale of alcoholic beverages penalty against the Green Mill would have a greater and more detrimental economic consequence if it were to be imposed sometime early in calendar year 2007 than it would have had in the fall of 2005. Since the fall of 2005, the amount of daily business has increased greatly at the Rosedale Green Mill, resulting in part from the impact of the addition of a new wing at the Rosedale Shopping Center. The new wing, which opened in late 2006, includes a Granite City Brewery and a multiplex AMC theatre. These two establishments have helped to increase greatly the amount of daily traffic through the entire Rosedale Center and at the Green Mill in particular. If a one-day suspension of Green Mill's liquor license were to be imposed, the Green Mill would lose a greater amount of daily revenue than it would have in the fall of 2005 and its reputation (spread by word-of-mouth) would suffer a larger blow because more people would be denied service than would have been denied on a comparable date in the fall of 2005.<sup>9</sup>

Based on the Findings, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Roseville City Council have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.55 and 340A.415 and Section 302.15C of the Roseville City Code.

2. The Notice of Hearing was proper and the City of Roseville has fulfilled all procedural requirements.

3. Under Section 302.15 of the Roseville City Code, the mandatory minimum penalty imposed by Part B.2.a. for a first violation on the part of an establishment in the position of the Licensee is a \$500 fine and a one-day suspension of the license.

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<sup>8</sup> Joint Exs. G, H, I and J.

<sup>9</sup> Testimony of John Gillen.

4. The hearing at which the Licensee appeared before the Roseville City Manager was conducted in error. The City Manager was without authority to impose the penalties specified against the Licensee in his Letter/Order of October 28, 2005. The erroneous hearing process and unauthorized penalty are not binding on the Roseville City Council, which is authorized to conduct its own proceeding in accordance with Section 302.15C of the Roseville City Code and Minn. Stat. § 340A.415.

5. The letter to the Licensee from the Roseville City Attorney on June 19, 2006, advising the Licensee that it was necessary for the Council to hear and determine whether there existed substantial reasons to deviate from the presumptive penalties set forth in Section 302.15 of the Roseville City Code, constitutes sufficient notice to the Green Mill that it should appear before the Council on July 10, 2006 or face the consequence of possible deviation from the penalties imposed by the City Manager. The letter specified that the Council had passed a motion to schedule a hearing to determine whether the mandatory minimum penalties set forth in Section 302.415 should be enforced against the Green Mill, including the mandatory one-day license suspension. It also gave notice to the Green Mill that the hearing would occur at the Roseville City Council meeting scheduled at Roseville City Hall on July 10, 2006, and gave the Licensee notice of its entitlement to appear at that time and place to offer any information it believed appropriate for the Council to consider in making its decision.

Based on the Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATIONS**

IT IS RECOMMENDED that the Roseville City Council impose the presumptive penalty of a \$500 fine and one-day license suspension against the Licensee, Green Mill of Rosedale, for serving alcohol to a minor on August 12, 2005; and

IT IS RECOMMENDED FURTHER that the City and the Licensee arrive at a mutual agreement as to which day the Licensee must serve its suspension.

Dated this 28th day of December, 2006

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Taped  
No transcript prepared

## MEMORANDUM

Since the Licensee is not contesting that its employee served alcohol to a person under age 21 in violation of Minn. Stat. § 340A.503, subd. 2 and Section 302.01 of the Roseville City Code, the issue remaining is whether or not the Roseville City Council should impose the presumptive penalty for a first violation by an intoxicating liquor license holder who serves alcohol to an underage person, that is, a \$500 fine and one-day suspension of the license.

Green Mill argues that the penalty imposed upon it by the City Manager, which was nullified subsequently by the City Council, should stand. The penalty imposed by the City Manager relieved Green Mill of the one-day suspension and imposed a \$500 fine and a \$500 charitable contribution, along with a requirement to register in the City's Manager and Server Training Program.

The Administrative Law Judge concludes that the City Council was within its rights to nullify the hearing procedure and penalty imposed by the City Manager. No provisions granting or delegating the City Manager hearing duties or penalty authority over on-sale liquor establishments appear in the Roseville City Code. The provisions of the City Code that impose penalties for the sale of liquor to minors reserve all such power to the City Council alone.

Green Mill's Manager argues that the Council should not have imposed on him another hearing proceeding, since he already appeared for a hearing before the City Manager, and was never notified that the penalty imposed by the City Manager was unauthorized until after the City Council met and took its action against Green Mill on July 10. If Mr. Gillen had appeared before the City Council on July 10, he notes he may have been able to persuade the Council to impose a milder penalty than the one-day suspension from which he now appeals. He argues also that the letter informing him of his opportunity to appear before the City Council on July 10, 2006 failed to inform him that the City Council proceeding on July 10 was to be the "public hearing" contemplated by Section 302.15C of the City Code, so he did not waive his right to appear at a hearing by not attending the City Council meeting on July 10, 2006.

Subsequent events have alleviated many of Mr. Gillen's concerns. The letter from the City Attorney to Green Mill on July 31, 2006, explained that the license suspension (Green Mill does not argue with the \$500 fine) could not take effect until Green Mill had the opportunity for a hearing under the Administrative Procedure Act.<sup>10</sup> That hearing was requested, and the Administrative Law Judge conducted it on December 13, 2006.

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<sup>10</sup> Minn. Stat. § 340A.415 provides that the hearing be conducted in accordance with the provisions of the contested case proceedings in the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.69. The hearing need not be conducted by an Administrative Law Judge from the Office of Administrative Hearings, but the City of Roseville opted to retain the services of the Office of Administrative Hearings in this case.

Mr. Gillen was given a full and complete opportunity to present all of his arguments regarding the appropriateness of the proposed one-day suspension at the hearing, and it is presumed he will have another opportunity to raise those arguments before the City Council at the meeting convened in the future by the City Council to discuss this report and issue a final vote on the suspension that is the subject of this appeal.

Green Mill argued at the hearing that the City Council acted in excess of statutory authority or of its jurisdiction and/or that taking action against it after the City Manager had already imposed a penalty was arbitrary or capricious, within the meaning of Minn. Stat. § 14.69. The Administrative Law Judge notes that Minn. Stat. § 14.69 lays out the standards by which an appellate court may affirm the final decision of an agency under the Minnesota Administrative Procedure Act or remand for further proceedings, or reverse or modify the agency decision if the decision was made upon an unlawful procedure or was arbitrary or capricious. The principles raised by Mr. Gillen apply, however, and there seems no doubt (the City admits) that it was an improper procedure for the City Manager to conduct a hearing with the Licensee or to impose any penalty on it, let alone a penalty deviating from the mandatory one-day suspension mentioned in the City Code. For the City to correct the mistakes made by the City Manager in this connection is not arbitrary, however, and operates to cure the procedural error. Had the City Council approved the imposition of the penalties by the City Manager after the unauthorized hearing, it would have itself made a decision based on an unlawful procedure that could indeed be interpreted as arbitrary. Those potential problems have been rectified.

At the hearing, the Administrative Law Judge pointed out to the Green Mill that the equitable argument it was making in maintaining that it could rely on the City Manager's decision, with which it had agreed to comply, was based on the doctrine of laches, which provides that any party to a proceeding who seeks relief must proceed with "clean hands". More precisely, the equitable argument advanced by Mr. Gillen is for equitable estoppel, that is, that the City, by its actions, has induced Green Mill to rely to its detriment on the representation that the proceeding before the City Manager and the penalty imposed by him was lawful and has brought the proceeding to an end.

The Minnesota Supreme Court, in the matter of Ridgewood Development Co. v. State of Minn., 294 N.W.2d 288 (1980), notes that for equitable estoppel to apply, there must be a demonstration that the government agency was at fault. 294 N.W.2d 288, 292-293. The Ridgewood Development case also states that even if the government agency was at fault, and the party acted in good faith upon the government's act, the party (Green Mill) must have made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights it ostensibly acquired. 294 N.W.2d 288, 292. In this case, the ALJ is not persuaded that the extent of Green Mill's reliance was sufficiently extensive to

cause its serving a one-day suspension, a suspension clearly mandated by the City Code, to be a “highly inequitable” result.

In the case of Brown v. Minn. Dept. of Public Welfare, 368 N.W.2d 906 (1985), the Court endorsed the principle that in order to establish a claim of estoppel, the aggrieved party must prove the other party made representations or inducements, upon which the aggrieved party reasonably relied, and that the aggrieved party will be harmed if the claim of estoppel is not allowed. It added that the government may be estopped if justice requires, but that it does not envision that estoppel will be freely applied against the government. 368 N.W.2d 906, 910. In this case, the Administrative Law Judge is not persuaded that justice requires alleviation of the one-day suspension of Green Mill’s liquor license. In that connection, he notes that the City Council voted to suspend the liquor licenses of the other two establishments for one day each at the same meeting (July 10, 2006) as it imposed the presumptive penalty on the Green Mill.<sup>11</sup>

This case is at a juncture where the City Council is caught between the imposition of a penalty that is mandated by the Roseville City Code and an equitable obligation to rectify the apparent injustice done to the Green Mill in putting the Licensee through an unauthorized hearing process and extending this matter out into a season where imposition of a one-day suspension would cause much greater economic harm than such imposition would have at the time it (arguably) should have been imposed (fall of 2005). Because of that rather unique situation, the Administrative Law Judge has recommended that the City Council consider strongly a compromise with Green Mill regarding imposition of the mandatory one-day suspension, and that is, to allow meaningful input by the Licensee in deciding the day on which the suspension should be imposed.

**R. C. L.**

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<sup>11</sup> Ex. E.